

Barry Glen Thunder 3002030
Name and Prisoner/Booking Number

Montana State Prison
Place of Confinement

700 Cowley Lake Road
Mailing Address

Deer Lodge, MT, 59722
City, State, Zip Code

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
Eighth DIVISION

Barry Glen Thunder,
FULL NAME OF PETITIONER
(include name under which you were convicted)
Petitioner,

Case No. 21-cv-4099
(To be supplied by the Clerk)

vs.

Darin Young, Douglas Weber et. al.
(Name of Warden, Superintendent, Jailor or
authorized person having custody of Petitioner)

PETITION FOR
WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY
PURSUANT TO 28 U.S.C. § 2254

Respondent,

and

THE ATTORNEY GENERAL OF THE STATE OF
Matthew Thelan,
Additional Respondent.

A. JUDGMENT OF CONVICTION

1. Name and location of court which entered the judgment of conviction you are challenging:
Sioux Falls County Courthouse, Minnehaha County, S.D.
2. Case number: 44 CIV 10-3526
3. Date of judgment of conviction: Nov. 3, 2008 (month/day/year) NOV. 3, 2008
4. Length of sentence(s): 60 (SIXTY) YEARS
5. Nature of offense(s) of which you were convicted (all counts): Rape and Four
counts of Possession of Child Pornography, Manufacturing,
or Distribution.
6. What was your plea? ☐ Guilty ☒ Not guilty ☐ Nolo contendere ☐ Insanity plea
7. Kind of trial? ☒ Jury ☐ Judge only
8. Did you testify? ☐ Yes ☒ No

B. APPEALS

1. Did you appeal the conviction or sentence you are challenging to the state supreme court?

☒ Yes ☐ No

If you did appeal, answer the following:

- a. Name of court: SOUTH DAKOTA SUPREME COURT
- b. Date the appeal was filed: 1/6/2010 (month/day/year)
- c. Case number: 10-3520
- d. Grounds raised: 1. There was insufficient evidence to support jury verdict. 2. The sentence imposed by trial court violated my 8th amendment right. 3. My 4th amendment right was violated. 4. I was denied my 6th right.
- e. Result: My case was terminated.
- f. Date the appeal was decided: 7/28/2014 (month/day/year)
2. Did you file a petition for writ of certiorari in the United States Supreme Court? ☐ Yes ☐ No
- If you answered "yes", answer the following:

- a. Date the petition was filed: _____ (month/day/year)
- b. Case number: _____
- c. Result: _____
- d. Date the petition was decided: _____ (month/day/year)

C. STATE HABEAS CORPUS PROCEEDINGS

1. Did you file a petition for habeas corpus relief in the state court?
- ☒
- Yes
- ☐
- No

If you answered "yes", answer the following:

- a. Name of court: U.S. DISTRICT COURT DISTRICT OF SOUTH DAKOTA (S.DIV.)
- b. Date the petition was filed: 7/7/2018 (month/day/year)
- c. Case number: 14-4122 H
- d. Grounds raised: 1. INSUFFICIENT EVIDENCE, 2. MY 8TH AMENDMENT RIGHT IS VIOLATED, 3. MY 4TH AMENDMENT RIGHT IS VIOLATED, 4. MY 6TH AMENDMENT RIGHT IS VIOLATED
- e. Was there an evidentiary hearing? ☐ Yes ☒ No
- f. Result: _____
- g. Date the petition was decided: _____ (month/day/year)
2. Did you seek review of your petition in the state supreme court? ☐ Yes ☒ No
- If you answered "yes", answer the following:
- a. Date the petition was filed: _____ (month/day/year)
- b. Case number: _____
- c. Result: _____
- d. Date the petition was decided: _____ (month/day/year)

If you did not file a petition for review, explain why you did not: I did not know that I could as I am not knowledgeable in this area and subject

Attach a copy of all state court written decisions regarding the conviction or sentence you are challenging

D. FEDERAL PROCEEDINGS

Is this your first federal petition for writ of habeas corpus challenging this conviction?

☐ Yes ☐ No

If this is not your first federal petition challenging this conviction, answer the following:

1. Name of court where the prior petition was filed: _____
2. Date the petition was filed: _____ (month/day/year)
3. Case number of the prior action: _____
4. Date the action was decided: _____ (month/day/year)
5. Did you raise any of the issues in this petition in your prior petition? ☐ Yes ☐ No
6. Was the prior petition ☐ Granted, ☐ Denied on the merits, or ☐ Denied on procedural grounds?
7. If the prior petition was denied with prejudice, has the Eighth Circuit Court of Appeals granted permission for you to file a successive petition? ☐ Yes ☐ No

Attach a copy of all Eighth Circuit Court of Appeals written decisions

E. PENDING PROCEEDINGS

Do you have any appeal, petition, application, motion, or other action currently pending regarding the conviction you are challenging in this petition? ☐ Yes ☒ No

If you answered "yes", answer the following:

1. Nature of the action: _____ (e.g., appeal, special action, habeas corpus, etc.)
2. Name of court where the action is pending: _____
3. Date the action was filed: _____ (month/day/year)
4. Case number: _____

F. REPRESENTATION

Who was the attorney who represented you in the following state court proceedings? Identify whether the attorney was appointed, retained, or whether you represented yourself pro se (without counsel).

	Name of Attorney	Appointed	Retained	Pro Se
1. Preliminary hearing:	<u>Ryan Kolbeck</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Arraignment and plea:	<u>Ryan Kolbeck</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Trial/guilty plea:	<u>Ryan Kolbeck</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Sentencing:	<u>Ryan Kolbeck</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Direct appeal:	<u>Ryan Kolbeck</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. State habeas corpus petition:	<u>Ryan Kolbeck</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

G. OTHER SENTENCES

Do you have any other sentences to serve after you complete the sentence imposed by the judgment you are challenging in this petition? ☐ Yes ☒ No

If you answered "yes", answer the following:

1. Name of the court that imposed the other sentence: _____
2. Date of judgment of conviction: _____ (month/day/year)
3. Length and terms of sentence: _____
4. Have you filed or do you plan to file any petition attacking the judgment which imposed the sentence to be served in the future? ☐ Yes ☐ No

CLAIMS FOR RELIEF

On the following pages, state concisely every ground for which you claim that your conviction or sentence violates the United States Constitution or other federal law. Your claims should not be based on state law. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and supporting facts.

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust (use up) your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the state supreme court, you must first present all other grounds to the state supreme court before raising them in your federal Petition.
 - **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
 - **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts setting forth specifically what your attorney did or failed to do. A rule of thumb is—state who did exactly what to violate your federal constitutional rights at what time or place.
 - **Timeliness of Petition:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d)¹ does not bar your petition.
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-
-
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H. GROUND I

1. My state conviction or sentence violates the following constitutional right or other federal law:

INADEQUATE ASSISTANCE OF COUNSEL MY 6TH RIGHT WAS VIOLATED

¹ § 2244. FINALITY OF DETERMINATION

- (d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

2. **Supporting Facts:** (State as briefly as possible the FACTS supporting Ground I. State the facts clearly in your own words without citing cases or legal arguments).

My Public Defender Mr. Ryan Kolbich, was totally unprepared, making the prosecutor and her posse able to turn the "trial" into a one-sided farce, if he was able to do a more thorough job, he would've been able to show the judge and jury the picture ~~of~~ my hands and my hands to show and prove that the right hand clearly depicted in the three thirty second videos in the cell phone is not my hand. no matter how long it's kept the video's right hand is not my right hand. 2. Had D.N.A tests, and any fall other tests performed on the phone and bedsheet. 3. Had a forensic(scientist) view and compare my right hand to the right hand clearly depicted in the three thirty second videos. 4. Raised the fact that all above were ~~are~~ not performed. 5. Let me tell my side of the facts. 6. Brought up that there is not sufficient evidence to support the jury's verdict. 7. Brought up the fact that my interrogation, which took over two hours was edited down to about three minutes, leaving out all of the severe onslaught of coercion, threats, lies, head games, etc. 8. Brought up the fact that the victim started crying due to C.P.S. coercion and to lie and say that I'd done & did some & anything to her and for her sister, both girls never indicated that I did some & anything to either or even hinted. 9. The girls mom had ALOT of minor and adult males in the house EVERY night, and these girls were running around in their underwear, pajamas while they drank and did drugs. 10. The phone was always in plain sight, everyone had access to it.

3. **Exhaustion of state court remedies:**

- Did you present the issue raised in Ground I to the state supreme court? ☐ Yes ☒ No
- If you did present the issue to the state supreme court, was the issue presented:
 - ☐ In a direct appeal
 - ☐ In your habeas corpus relief proceeding
 - ☐ Other: _____ (e.g., special action)
- If you did not present the issue to the state supreme court, explain why you did not:

Due to ineffectively assistance of counsel, these and alot more was & is never brought to light.

I. GROUND II

1. My state conviction or sentence violates the following constitutional right or other federal law:

Eighth right to be free from cruel or unusual punishment

2. **Supporting Facts:** (State as briefly as possible the FACTS supporting Ground II. State the facts clearly in your own words without citing cases or legal arguments).

I'll spend the rest of my life in prison for something I didn't do because "People are living longer nowadays" the facts that I only have three D.V.I.s, each a year apart, from the 90's, 1. Disorderly Conduct for sleeping by the stairs of my Aunt's Apt. B.D.G. (I forgot what her Apt #) and a CONTRIBUTING TO A MIA, which I don't know how I got or when I got it. I was given three (3) points on my psycho-sexual test, 1 point for sitting in jail for a year before taking the test, and 2 points for "the severity of the crime", which, Judge Joseph Neiles noted "that although the nature of the offense was "horrendous" it was not among the most serious of cases he sees." and, that this case was "NOT AS SERIOUS IN MY MIND AS CASES WHERE THERE'S BEEN INJURIES TO THE VICTIM OR THE VICTIM WAS OLDER AND SUFFERED PSYCHOLOGICAL DAMAGE" During their interviews, both girls said that the only people with porn (videos and pictures) were their parents, who, let them view it. They also said that the only people who took pictures and videos with phones were their family members, I was never mentioned. My test report found that I am at low risk for engaging in violence, and because my case did not demonstrate the "most serious combination of criminal conduct and background of the offender" being convicted for something that I did not do until I'm 83 violates my Eighth right.

3. **Exhaustion of state court remedies:**

- a. Did you present the issue raised in Ground II to the state supreme court? ☒ Yes ☒ No
- b. If you did present the issue to the state supreme court, was the issue presented:
- ☐ In a direct appeal
- ☒ In your habeas corpus relief proceeding
- ☐ Other: _____ (e.g., special action)

c. If you did not present the issue to the state supreme court, explain why you did not:

INEFFECTIVE ASSISTANCE OF COUNSEL

J. GROUND III

1. My state conviction or sentence violates the following constitutional right or other federal law:

My 4th right against unreasonable search and seizure was violated.

2. **Supporting Facts:** (State as briefly as possible the FACTS supporting Ground III. State the facts clearly in your own words without citing cases or legal arguments).

The phone was given to me by Darené Rénoux when I needed an alarm clock for work, it was not activated, and I set three alarms, I did not know that the video and picture features were and could be used. When Sony "found" the "pictures" which were magically erased from the phones memory, which, I think, if there actually were pictures, did show the person or persons who did what I'm doing. That forced to become my property, a search and seizure order would be and is needed to proceed with the activity, but most of all, my permission is also needed and crucial to proceed as the law states. Of course I would've given permission, as I did not know about the videos, and what they depicted, which is why Sean Kouistra kept repeating, "We have your face", "We know you did it", "Just say you did it", "Your face is on the video" etc. but did not want to show me when I told him that I wanted to see them and to prove it. I did not give permission of any kind to have the phone searched, but the allegation of child porn was his excuse to break the law(s) of which they are sworn in to abide by.

3. **Exhaustion of state court remedies:**

a. Did you present the issue raised in Ground III to the state supreme court? ☒ Yes ☐ No

b. If you did present the issue to the state supreme court, was the issue presented:

☐ In a direct appeal

☒ In your habeas corpus relief proceeding

☐ Other: _____ (e.g., special action)

c. If you did not present the issue to the state supreme court, explain why you did not:

K. GROUND IV

1. My state conviction or sentence violates the following constitutional right or other federal law:

There was ~~is~~ NOT sufficient evidence to support the jury verdict.

2. **Supporting Facts:** (State as briefly as possible the FACTS supporting Ground IV. State the facts clearly in your own words without citing cases or legal arguments).

The state failed to make any showing that I had the requisite knowledge that any illegal material of any kind may have existed on the cell phone, and didn't take into account ~~that~~ the multiple minor and adult males Jessica took to the house to do drugs, drink, and have sex with. And since my door was always opened via everyone breaking in, they all had full access to everything in it including the phone which was ALWAYS in plain sight, if finger prints are taken from the phone, ALOT of males will be identified, and the person or people who did what I'm in here for will be found. No types of tests were performed to prove that anything happened to anyone. A forensic's scientist was ~~is~~ not employed to prove that the right hand clearly depicted in the three thirty second videos is in fact, my right hand. I've been trying to get a court order under SDCL 23-5B-1 for a forensic's lab to prove my innocence but am always denied because when it comes to me, all it takes is an accusation, allegations, assumptions and guesses for the judge to make an "example" out of and take my life away.

3. **Exhaustion of state court remedies:**

a. Did you present the issue raised in Ground IV to the state supreme court? ☐ Yes ☐ No ^{both}

b. If you did present the issue to the state supreme court, was the issue presented:

☐ In a direct appeal

☒ In your habeas corpus relief proceeding

☐ Other: _____ (e.g., special action)

c. If you did not present the issue to the state supreme court, explain why you did not:

INEFFECTIVE ASSISTANCE OF COUNSEL

WHEREFORE, Petitioner prays that the court will grant Petitioner the relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on 5/25/21-3:40 p.m.
DATE


SIGNATURE OF PETITIONER

(Name and title of paralegal, legal assistant,
or other person who helped prepare this petition)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable.

Barry G. Thunder
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59722

UNITED STATES DISTRICT COURT
District of South Dakota
Office of the Clerk
Room 128
Federal BLDG & U.S. Courthouse
SIOUX FALLS, S.D.
57104-6851

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